

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Ruth Adjartey, Ismail Abdelhamed, Vesta)
Ballou, Mildred Collins, Jackeline)
Cucufate, Marjorie Evans, Matthew)
Griffin, Gerard Hughes, Donna Mejias-)
Berrios, Janet Montgomery, Elizabeth)
Norris, Luciano Oliveira, Mychelyne)
Oliveira, Susan Osborne, Daniel)
Peristere, Christy Raymond, Caitlin)
Ryals, John Schumacher, Myron Swanston)
Petitioner-Appellants)

Docket No. SJC-12380

v.)

Worcester Housing Court,)
Original Respondent-Appellee,)
Santander Bank, Midfirst Bank,)
Nationstar Mortgage LLC, MRH SubLLC,)
Freddie Mac, Fannie Mae, U.S. Bank N.A.)
As Trustee Of J.P. Morgan Acquisition)
Trust 2006-WMC3, Lisa Y. Barron, HSBC)
Bank USA N.A. As Trustee For Nomura)
Asset Acceptance Corporation Mortgage)
Pass Through Certificates Series)
2005-AR3, HSBC Bank USA N.A. As Trustee)
On Behalf Of Fremont Home Loan Trust)
2006-CMortgage-Backed Certificates)
Series2006-C, Savers Co-Operative Bank,)
Deutsche Bank National Trust Co. Trustee)
For Ameriquest Mortgage Securities Inc.)
Asset-Backed Pass-Through Certificates)
Series 2003-13, US Bank N.A. As Trustee)
For Bear Stearns Asset Backed Securities)
Trust 2004-Ac4, U.S. Bank Trust N.A.)
Trustee Of Volt 2012-NP11Asset Holdings)
Trust)
Respondents-Appellees)

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Abdelhamed, Vesta Ballou, Lori Cairns,)
Jackeline Cucufate, Marjorie Evans,)
Gerard Hughes, Maria Navedo, Pau' Norris)
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Austell, Annette Bent, Steven Bourassa,)
 Samantha Farrar, Patricia Ferreira)
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 Heather Kozak, Cheryl Leblanc, Philippe)
 Leblanc, William Marks, Deb Mccarthy,) Docket # SJC-12406
 Keith Mckenzie, Paulette McKenzie,)
 Miranda Morgan, Joseph Nuzzolilo,)
 Cynthia O'Gara, Mychelyne Oliveira,)
 Susan Osborne, Thomas Saxe, Al Solitro,)
 Sherry Stanley, Myron Swanston, Stefani)
 Tubert, Tracey Tobin, Cynthia White,)
 Nunciata Sullivan, Lila Ortiz, Carl)
 Rellstab, Carey Souda, Patricia O'Dell,)
 Linda Potter, Brian Potter, Jasmine)
 Alvarez,)
 Petitioner/Intervenor-Appellants)
 v.)
 Worcester Housing Court,)
 Respondent-Appellee,)
 _____)

Petitioners' Reconsideration of SJC Decision as to Correcting
 Posture, Procedure that Governed and Relief

NOW COMES Petitioner Christine Hilton and requests this Honorable Court reconsider its decision on the basis that whilst the decision acknowledges the various issues raised by the Petitioners, the decision failed to provide the Petitioners with a form of effect relief.

The Petitioners respectfully submit that the Massachusetts Constitution secures the Petitioners' right to relief in these circumstances. Petitioner asks for reasons below, it be granted.

In its decision, this Honorable Court has already affirmed they have correctly identified the legal tests defined by core SJC decisions such as *Reade v. Galvin* as to equal access to justice if indigent; and *McDonough*, the Petitioner as to

reasonable accommodation for equal access to justice given disability; and they have a right to see redress of larger issues through the courts and cannot thereby trigger a search for criminal charges unlicensed practice of law.

While laying out broad, fundamental law and processes for embodiment in the Courts at least as to indigent litigants and litigants with disabilities, the decisions provided no relief as to the patterns of violative behavior and practices; this is true even though the decisions affirmed the settled nature of these requirements as Petitioners had already known and argued them merely heightened to stark contrast to the evidence of years of mistreatment by the WHC laid out in the Petitions.

STANDARD OF REVIEW

Petitioner timely (given request for enlargement) requests modification of this Honorable Court's decisions of April 10, 2019 in Adjartey v. Worcester Housing Court and Hilton v. Worcester Housing Court under applicable rule:

"Appellate Procedure Rule 27: Motion for reconsideration or modification of decision

Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present."

ARGUMENT

To begin, the Petitioners submitted the petitions before

this Court explicitly against the WHC. The petitions were for relief pursuant to Mass Rules of Civil Procedure in the style of a Writ of Mandamus; petitioners called upon the SJC to use its superintendent powers to give relief to the Petitioners (and those similarly situated) for various violations that form a pattern of denial of equal rights to access justice in the WHC. The petition was made pursuant to MGL c. 211 § 3 ¶ 2.

The underlying issue the Petitioners alleged is that these numerous violations result in the unmistakable fact that the Respondents have demonstrated a pattern of behavior which resulted in disparate treatment to the Petitioners.

They brought it on the basis of system-wide discrimination in the WHC. The combination and virulency of which renders the WHC a hostile environment for the Petitioners and those similarly situated.

Petitioners therefore brought a case invoking their right to relief against a court, a substantive right under Article V of the Massachusetts Constitution:

"All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."

This right to seek redress against a government body's violation of a private right¹ was formerly expressed as a Writ of

¹ "The writ of mandamus is a device for securing by judicial means the enforcement of public duties. It is a command issued

Mandamus, MGL Chapter 249 § 5.

However, Petitioners were aware that a Writ of Mandamus (MGL Ch. 249 s.5)² went out of existence in Mass Law in the 1973; a Writ of Mandamus went out of service was because it was considered antique; its functions and ancient promise of relief (now perhaps 707 years old³) could be and were subsumed under and in compliance with Mass.R.Civ.P.

See Mass Rules of Civil Procedure Rule 81:

"(b) Writs abolished

The following writs are abolished: audita querela; certiorari; entry; error; mandamus; prohibition; quo warranto; review; and scire facias. In any action seeking relief formerly obtainable under any such writ, procedure shall follow these rules.

Reporter's notes

(1973) ...Rule 81(b) abolishes a series of venerable, and in many instances, arcane, writs. Burial of these antiques, however, does not mean elimination of the relief they afforded. It does mean that an application for such relief will henceforth be commenced like any other civil action under these rules, viz., by complaint and summons, with the former containing a prayer for the appropriate relief."

The note still existent in MGL Ch. 249 s.5, states a Writ of Mandamus is generally only to be brought in Superior Court or

in the name of the Crown from a superior court of record, requiring an inferior authority to perform a public duty that has been imposed upon it." 15 Victoria U. Wellington L. Rev. 127 (1985) *An Historical Account of the Rise and Fall of Mandamus* By Robert H. Howell.

² " A civil action to obtain relief formerly available by writ of mandamus may be brought in the supreme judicial or superior court..."

³ First possible writ in the historic record at 1297-1313. Op of . *An Historical Account*

the SJC of Massachusetts.

Those options are further narrowed by MGL c. 211 § 3 ¶ 2 which states that a suit must be brought under that Chapter to the Supreme Judicial Court of Massachusetts ("SJC") if the jurisdiction required is for:

"general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy".

The Petitioners acknowledge that their claim of disparate treatment is the cause of action before this Court. While not named as a discrimination petition, nevertheless, the pattern of discrimination itself forms the basis of the urgent need for relief under MRCP and the superintendent powers of this Court.

The Petitioners note that pursuant to the standard of review the petitioners must have demonstrated that they have exhausted all available remedies before relief can be granted.

However, the petitioners submit that herein lies a lacuna. Specifically, the Petitioners submit that the only statute which permits the Petitioners to commence a lawsuit against an

"inferior court", the WHC, the Respondent, is MGL Chapter 211 §3 specifically the second paragraph⁴.

Thus, the Petitioners submit that the only available remedy to prevent the continued violation of civil rights by the Respondents is MGL Chapter 211 § 3. There is no other Court with jurisdiction – so there are no other remedies for judicial relief in the Massachusetts Courts⁵.

Given the subject-matter of these cases fell explicitly under (and the right to such relief remains guaranteed) elements in the black-letter language of MGL c. 211 § 3 ¶ 2 and although a Writ of Mandamus technically no longer exists in Massachusetts law but is subsumed in MRCP, Petitioners brought this petition under that configuration of their understanding of the jurisprudence of Massachusetts.

⁴ "...the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. ..."

⁵ The Court is reminded as a partial list: that Petitioners tried remedy within the WHC (recusal, change of venue requests); they tried the Court ADA Coordinators (WHC, and statewide); they filed Judicial Conduct Complaints estimated at about 40 – these were never docketed for review for various reasons.

The relief via Writ of Mandamus was subsumed under MRCP and given that a single Justice's proceedings are specifically and explicitly controlled by MRCP, Petitioners case progressed in the following way under those rules.

Under MRCP, the Petitioners have a right to identify the wrong for which they seek redress and to name the Respondent; they filed their initial petition, named the governmental arm against which they sought redress: the WHC both in the persons of the judges and the clerk magistrate as collectively identified as the court as a whole. They thereby established their standing and the jurisdiction of the only court with the unique and extraordinary superintendent powers to grant redress.

Petitioners served the inferior court, the branch of Massachusetts Government that they sought to sue under the applicable service requirements (MRCP Rule 4(d)(3)) and the Attorney General's office. They properly entered their petition as a joint action by those similarly situated with the single Justice of the SJC (not combined actions that remained of "differing" bases).

Having entered their petition in each case, the WHC had 20 days to answer (or seek more time for an answer) under MRCP Rule 12 having failed to answer (or be granted an extension of time), the WHC assented it to the facts proffered in the petition.

The WHC has only ever admitted or denied a limited number

of facts. It made no blanket denial and therefore the facts became undisputed fact, the remainder became unquestionably undisputed facts under MRCP Rule 8 & 12.

Instead of proceeding as the Constitutionally promised relief styled as a Writ of Mandamus is defined under MRCP and MGL c. 211 § 3 ¶ 2, the single Justice of the SJC attempted to apply SJC Rule 2:22, as opposed to the standard of review for a Writ of Mandamus guaranteed in MRCP 81(b).

In contrast to the promised procedure for relief as narrowed by the statutory option, in the background of the presumptive application of Rule 2:22 the Single Justices did not reverse the presumption and wrongly allowed that the presence of the WHC, as the only named Respondent, was in nominal capacity only. This effectively removed the Party against which Petitioners need and must have relief.

While Rule 2:22 says that the Respondent Courts are named nominally, unless the Single Justice decides to declare them otherwise, the inhabitants of Massachusetts under the first part of our constitution (our Declaration of the Rights of the Inhabitants of the Commonwealth), guarantees the right to redress against the government; it is included under the U.S. Constitution as well. Under article XI of the Massachusetts Constitution, we as "Inhabitants" are promised a *certain remedy*, not an uncertain remedy through the courts.

If the ability to sue a court administration etc- exists only if a single Justice essentially ops the Respondent Court in as a real party in interest, there is no certain remedy.

In fact, in the decisions by the two single justices, they did not explicitly determine the nominal or non-nominal status of the WHC. The WHC has behaved absolutely as a party in interest. Having fully exercised that role and due process rights thereby, it is not clear that they can then be declared only a nominal party later on.

The presumption in this Court's instant decisions, that the WHC is not a real party in interest, implies that it is not required then to have done responsive pleadings under MRCP. As neither of the Single Justices explicitly determined the nominal or non-nominal status of the WHC, thereby, this Court has presumed they omitted a critical element of the appeal, no finding of fact to accept or refute.

Further, no decision was made timely enough (within 20 days) to clarify that the WHC was not required to answer the complaint/petition against it. This renders Mass SJC Rule 2:22 functionally a mechanism that strips the only rights of those who might seek mandamus relief under the only statute available to them, MGL c. 211 § 3 ¶ 2. This, wrongly, is the situation within which this Court has allowed the Petitioners and they believe, needs to stop making them subject to.

Under the misguidance of Rule 2:22, inaction by a Single Justice renders the Respondent a nominal not real party in interest, essentially stripping Petitioners in actions formerly known as a Writ of Mandamus of MRCP and, therefore, with no due process rights at all. Denied the formulation as a Writ of Mandamus against the lower court as opposing party⁶, the constitutional right to the possibility of a "certain remedy" is gone.

However, Petitioners' right to redress exist constitutionally under statute; they are provided only under the Writ of Mandamus now MRCP and MGL c. 211 § 3 ¶ 2. The change to the Writ of Mandamus depended on MRCP changes that are incorporated by reference into our laws.

MGL c. 211 § 3, however, explicitly did not allow the SJC, in its exercise of its general superintendence, to affect the general or special laws, unless its original or appellate jurisdiction found such a law to be unconstitutional in these cases under this statute.

The Petitioners submit that Article V of the rights of the

⁶ Petitioners could not sue the lower court opposing parties to address the discriminatory policies and behavior of the WHC. Only the court in question – and this is affirmed in the guidance as to indigency and disability in the instant SJC decisions for instance – can act as to these matters. And only those in authority can set the tenor of the climate of discrimination in the Court. The responsibility for that is defined in the Judicial Conduct Code as the responsibility of the Judge and for the Court administration it is shared with the Clerk Magistrate.

Inhabitants of the Commonwealth, "part the first" of our constitution promises accountability for residents of their government. This includes the judiciary. But accountability requires a means. Someone has to be authorized; they have to provide direction; there has to be relief when that direction is ignored and the resident or residents in question are harmed.

By presumptively stripping and actually never explicitly addressing the Respondents role as a full defendant and allowing it, by *sub silencio*, to be treated only in a nominal capacity, in fact, the Single Justice removed from the Petitioners, their jurisdictional access; it did so by removing the Defendant. It also thereby stripped their Petition of any controversy, removing thereby their Prudential standing. It is stripped them of Standing, the right to bring suit and all due process against their rights under statute, court rule and the constitution.

In contrast, the imposition of Rule 2:22, inappropriately, is not a proper expression of MGL c. 211 § 3 ¶ 2, as it eviscerates that section of the black letter language in the law.

In the instant decisions, this Honorable Court, in fact, fundamentally altered the postures of these petitions. By enforcing SJC Rule 2:22, it attempted to exercise its General superintendence, by doing explicitly what the statute does not allow; it attempted to "supersede a general or special law", MGL Chapter 211 §3; it could not possibly have done so "acting under

its original or appellate jurisdiction, to declare that law unconstitutional", as Petitioners constitutionally very much need the 2nd paragraph of MGL Chapter 211 §3, but instead it relied upon a rule that appears to be unconstitutional.

The imposition and exercise of rule 2:22 in the only venue where one may sue a court under the purposes of the constitution expressed in the "antique Writ of Mandamus," means that Petitioners were stripped of their opponent, and, therefore, the purpose of their controversy. They were stripped of their right to redress against a governmental body under the Constitution, and, in fact, stripped of all due process rights, as the MRCP under which Writ of Mandamus purposes were promised to continue to be available to residents of the Commonwealth. There was no due process of any kind as MRCP appears to have been thrown-out, along with their correctly and constitutionally identified named opponent as party with the real interest in the case, along with their own standing, by stripping them of their controversy and the legally required requirement under court rules of findings of fact by the Single Justice. In fact, as long as MRCP (the correct rules under which the jurisprudence and law of the land identifies their proceeding had to function) is applied, the facts of their case, in fact, became undisputed with the lack of timely response (or request for extension) by their true respondent in interest, the WHC.

CONCLUSION

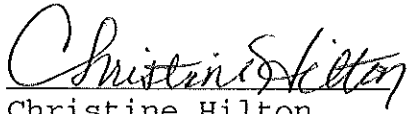
Petitioners need relief against the discriminatory practices and behavior of an inferior Court which has effectively barred their access to Justice. That relief is guaranteed in our Constitution; that guarantee was expressed in a Writ of Mandamus and remains guaranteed relief under MRCP. They have a right to name the branch of government denying their rights. They have a right to name their controversy and have due process as codified in MRCP.

They did so, served properly, and in the only jurisdiction defined by statute. Their Respondent exercised due process under MRCP as the rules governing proceedings before a single justice.

This Court, Petitioners believe, must re-orient itself in line with the Constitutional promise of our Commonwealth. They recognize it means re-assessing its only rule for interpreting MGL Chapter 211 §3 – but the Court is so empowered to do; it is not empowered to impose a rule interpretation that can only function in opposition to constitutionally guaranteed rights.

Please reconsider the lack of relief in light of this re-orientation, and provide relief in line with the equal access so beautifully affirmed in the Adjartey decision, and Petitioner hopes as similarly to be laid out as right to access justice equally for pro se litigants and for litigants who share an affiliation for redress of injustice.

Respectfully yours,



Christine Hilton
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Date 5/7/2019

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

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Re: Docket #16H85SP004400 MidFirst Bank v. Raymond,
Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,
U.S. Bank Trust, N.A. Trustee of VOLT 2012-NPL1 Asset Holdings
Trust v. Swanston,

Re: Docket # 14H85SP000755 Fannie Mae v. Osborne,

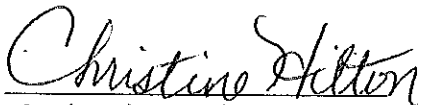
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